

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DINH V. LE,  
Plaintiff,  
v.  
NANCY BERRYHILL,  
Defendant.

Case No. 17-CV-06695-LHK

**ORDER VACATING ORDER TO SHOW  
CAUSE**

Re: Dkt. No. 27

Plaintiff filed his social security appeal on November 20, 2017. ECF No. 1. Pursuant to the procedural order for social security review actions, Plaintiff had 28 days to serve and file a motion for summary judgment after service of Defendant's answer. ECF No. 4. Defendant answered on July 24, 2018. ECF No. 20. As such, Plaintiff had until August 21, 2018 to file his motion for summary judgment.

Plaintiff did not file a motion for summary judgment on August 21, 2018. On August 23, 2018, Plaintiff filed a stipulation and proposed order requesting a thirty day extension of time, until September 22, 2018, to file a motion for summary judgment. ECF No. 22. Plaintiff stated that "[t]his extension is necessitated due to Plaintiff's counsel's upcoming schedule of administrative hearings and district court briefs due. Plaintiff makes this request in good faith with no intention to

1 unduly delay the proceedings.” *Id.* On August 23, 2018, the Court granted this stipulation and  
2 continued the deadline for Plaintiff to file his motion for summary judgment to September 22,  
3 2018 (“August 23, 2018 Order”). ECF No 23. However, the Court warned that “[n]o further  
4 continuance will be granted.” *Id.*

5 On September 21, 2018, Plaintiff again filed a stipulation and proposed order, this time  
6 seeking a forty-five day extension of time, until November 6, 2018, to file his motion for summary  
7 judgment. ECF No. 24. Plaintiff asserted the same reasons for the extension that he had in the first  
8 stipulation. *Id.* Pursuant to the Court’s August 23, 2018 Order, which stated that “[n]o further  
9 continuance will be granted,” the Court denied the second stipulation on September 24, 2018. ECF  
10 No. 26. Accordingly, Plaintiff’s deadline to file a motion for summary judgment remained  
11 September 22, 2018.

12 Plaintiff did not file a motion for summary judgment on September 22, 2018. Thus, the  
13 Court ordered Plaintiff to show cause why his social security appeal should not be dismissed for  
14 failure to comply with the Court’s deadline to file his motion for summary judgment and for  
15 failure to prosecute. ECF No. 27. The Court ordered Plaintiff to file a written response by October  
16 5, 2018 and to appear at a hearing on October 11, 2018 at 1:30 p.m. *Id.*

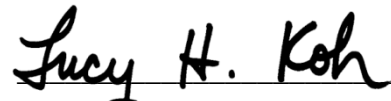
17 On October 4, 2018, Plaintiff filed a motion for summary judgment, and on October 5,  
18 2018, Plaintiff filed a written response to the order to show cause. ECF Nos. 32, 33. Plaintiff’s  
19 attorney explained that he had failed to learn of the Court’s denial of a further extension. ECF No.  
20 33. Additionally, Plaintiff’s attorney explained that he had initially requested the extension given  
21 that he is a sole practitioner and is currently managing a demanding case schedule. *Id.*

22 Accordingly, the order to show cause and the hearing on the order to show cause set for  
23 October 11, 2018 at 1:30 p.m. are hereby VACATED. Defendant shall file any opposition or  
24 counter-motion by November 5, 2018.

25 **IT IS SO ORDERED.**

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27 Dated: October 5, 2018

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LUCY H. KOH  
United States District Judge